



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 23, 2011

Mr. Hal C. Hawes  
Legal Advisor  
Williamson County Commissioners Court  
710 Main Street, Suite 200  
Georgetown, Texas 78626

OR2011-13825

Dear Mr. Hawes:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 433253.

Williamson County (the "county") received a request for the information submitted by SunGard Public Sector Inc. ("SunGard") in response to the "Section 10 FBR Module" portion of RFP 09WCP817. Although you take no position on whether the requested information is excepted from disclosure, you state release of this information may implicate the proprietary interests of a third party. Accordingly, you notified SunGard of the request and of that company's right to submit arguments to this office as to why its information should not be released. *See Gov't Code* § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the comments submitted by SunGard and reviewed the submitted information.

First, we must address the county's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See Gov't Code*

§ 552.301(b). Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). In this instance, the requestor states she first sent the request for information to the county on April 19, 2011. However, you did not request a ruling from this office, submit comments explaining why your stated exceptions apply, or submit a copy of the information requested until August 12, 2011. Although you state the county received the requestor's re-assertion of that request on August 1, 2011, you do not explain why the county did not respond to the April 19, 2011 request for information. Because the county failed to explain this discrepancy, we find the county failed to comply with the requirements of section 552.301 with respect to this request for information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because the interests of a third party can provide a compelling reason to withhold information, we will consider SunGard's submitted arguments.

Next, we note the only responsive portion of SunGard's proposal is that portion answering the "Section 10 FBR Module" portion of RFP 09WCP817. SunGard's submitted arguments do not address the proprietary nature of that portion of the company's proposal. Thus, we have no basis to conclude the company has a protected proprietary interest in any of the submitted information. *See* Gov't Code § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, the county may not withhold any of the information at issue on the basis of any proprietary interest SunGard may have in it. As no exceptions to disclosure have been raised for this information, the county must release the submitted information to the requestor.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/agn

Ref: ID# 433253

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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Lake Mary, Florida 32746  
(w/o enclosures)